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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,981	05/23/2001	Amanda Maria Elsome	JMYT-233US	3599
23122	7590	07/28/2004	EXAMINER	
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			MADSEN, ROBERT A	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,981

Applicant(s)

ELSOME ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,7,9-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 12, 2004 has been entered. Claims 1-3,6,7,9-12 are currently pending in the application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-3,6,9, and 10 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Wheeler. See entire article.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler as applied to claims 1-3,6,9, and 10 above, further in view of Jeffrey et al. (US 5976827)

6. Wheeler teaches sensing oxygen, including oxygen in ethanol, with a palladium metal fluorophore complex in a film, but is silent in teaching the ligand emitted is fluorexon as recited in claims 7 and 11. , in a film comprising PVA as recited in claim 12.

7. Jeffrey et al. also teach providing sensors to indicate the presences of various gas, such as oxygen. Jeffrey et al. teach selecting the particular fluorescent depends on the desired dynamic ranges and wavelength changes that are detectable by various measuring techniques (Column 4, line 8 to Column 5, line 2).gas sensors to indicate contamination, by microorganisms. Therefore, it would have been obvious to select any other type of ligand , depending on the desired dynamic ranges and wavelength changes suitable to the particular method of measurement since Jeffrey et al. teach selecting any particular type of fluorescent for gas sensor depends on the desired dynamic ranges and wavelength changes suitable to the particular method of measurement.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wheeler as applied to claims 1-3,6,9, and 10 above, further in view of Horan (US 6149952).

9. Wheeler teaches a gas sensor in comprising a metal coordinated complex in a film, but is silent in teaching in a film comprising PVA as recited in claim 12. Horan also

teaches a gas sensor in a film inside a food and is made of a hydrophilic , permeable polymeric composition so that water and water vapor , which may contain the gases in dissolved form, can reach the sensing means. PVA is typical of can liners or food wrap (Abstract, Column 2, lines 15-40 and Column 4, line 20-25). Therefore, it would have been obvious to modify the resin utilized by Wheeler and include PVA since this is a typical resin used in food wraps and will allow water or water vapor, along with any dissolved gases, to pass into the sensor.

Response to Arguments

10. Applicant's arguments in light of the amendment with respect to the rejection of claim 1 made under 35 U.S.C. 102(b) as being clearly anticipated by Suto (US 5064576) and the rejection of claims 1,-3,6,7,9,10 made under 35 U.S.C. 103(a) as being unpatentable over Wolfbeis et al. (US 5407829) in view of Moretti et al. (1988) as evidenced by Dojindo Online have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as stated above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761



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